

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUL 26 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ABEL L. CHAVEZ,

Defendant - Appellant.

No. 05-30286

D.C. No. CR-03-00171-a-JKS

MEMORANDUM*

Appeal from the United States District Court
for the District of Alaska
James K. Singleton, Chief Judge, Presiding

Submitted July 24, 2006**
Anchorage, Alaska

Before: **KOZINSKI, BERZON and TALLMAN**, Circuit Judges.

Chavez's argument that the district court should have found contested facts at sentencing beyond a reasonable doubt is foreclosed by United States v. Kilby, 443 F.3d 1135, 1140 (9th Cir. 2006), where we held that "district courts should

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

resolve factual disputes at sentencing by applying the preponderance of the evidence standard.”

Chavez does not argue that he qualifies for the narrow exception contemplated by United States v. Dare, 425 F.3d 634 (9th Cir. 2005), which recognized that “[w]hen a sentencing factor has an extremely disproportionate effect on the sentence relative to the offense of conviction,’ the government may have to satisfy a ‘clear and convincing’ standard.” Id. at 642 (quoting United States v. Hopper, 177 F.3d 824, 833 (9th Cir. 1999)). Nor, on this record, could he.

AFFIRMED.